

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1512 of 1998

with

CIVIL REVISION APPLICATION No 1513 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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RAVJIBHAI DAHYABHAI RAJPUT

Versus

GHANSHYAMDASJI GURU

RAMDUTDASJI MAHANT

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Appearance:(In both the matters)

MR PV HATHI for Petitioners

MR LV DABHI for MR HM PARIKH for Respondent No.1 to 3

MR MUKESH PATEL for Respondent No. 4  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/02/2000

ORAL JUDGEMENT

1. As these two matters are between the same parties and arise from the order passed by the court below though in different proceedings but in the same matter, the same

are taken up for hearing together and are being disposed of by this common order.

2. The facts of the case are that the Civil Misc. Application NO. 113/93 has been filed by Mahant Ghanshyamdasji under section 47 of Bombay Public Trusts Act in the court of District Judge, Kheda for appointment of trustees. A public notice was issued on 21-10-93 by Joint District Judge, Nadiad. The respondents NO. 2 and 3 made an application to the Joint Charity Commissioner being Application No. 1 of 1993 under section 50 (A) of the Bombay Public Trusts Act for modification of the scheme and for insertion of a new clause (5) therein and for appointing five persons name by them as trustees. The respondent No.1 has come up with a case that despite of the protest by him and substantive application is pending under section 47 of the Bombay Public Trusts Act indiscriminately the Charity Commissioner appointed all the five persons as trustees and other prayers made for modification of the scheme etc. were not accepted. The respondent No.1 being aggrieved of this order of the Joint Charity Commissioner filed an application under section 72 of the Bombay Public Trusts Act in the District Court Kheda at Nadiad which was registered as C.M.A. No. 86 of 1995. This is also pending in the court of Extra Assistant Judge, Kheda at Nadiad. The C.M.A. No. 113 of 1993 has to be heard with C.M.A. No. 86 of 1995. The applicants herein filed Ex. 63 an application for their impleadment as party to the proceedings in C.M.A. NO. 113 of 1993. The C.A. Ex.58 for similar relief has been filed by them in C.M.A No. 86 of 1995. Both these applications came to be rejected by the court below under the order dated 17th July, 1998.

3. Learned counsel for the petitioners contended that the applicants are necessary party to these proceedings as they are the beneficiaries of the trust and they should have been allowed to be impleaded as party. It has next been contended that the public notice has been given of these proceedings i.e. C.M.A. No. 113/93 and when the applicants have applied for their impleadment they should have been allowed to be impleaded as a party. Lastly, it is contended that both the orders of the court below are perverse.

4. On the other hand, the counsel for the respondents supported the orders of the court below.

5. On the record of this civil revision application, an affidavit of respondent No.3 is there. In this affidavit, it is mentioned that the applicants No. 2 to

8 have already been examined in the proceedings on behalf of the respondent No.1. It is further stated that in the proceedings before the Charity Commissioner, these applicants were not the party. The application has been filed after about six years of the date of filing of the C.M.A. No. 113/93. This C.M.A. was presented in the court on 21st August, 1993 and this application Ex. 63 was given on 6-6-1998. Learned trial court is correct in its approach that if the applicants were really interested for their impleadment as party in the proceedings they should have applied before the Charity Commissioner but that is not done. They have been examined as witness in the proceedings. They are aware of these proceedings and in fact are taking part in the proceedings and appears to have supporting the respondent No.1. This application, as rightly observed by the court below prima-facie, appears to be a malafide one. This application appears to have been filed for the sole purpose to delay the proceedings. The court below has directed that the matter should have conducted on day to day basis and it should be disposed of within one month from the date of that order. This order has been passed on 19th June, 1998 and thereafter the present application has been filed. From these facts, it is clearly borne out that at the instance of the respondent No.1 this application appears to have been filed for the sole object and purpose to delay the proceedings. This is even corroborated from the fact that almost all the applicants have been examined as witness in the proceedings on behalf of the respondent No.1. In the facts of this case, the orders passed by the court below are perfectly legal and justified. The orders of the courts below if are allowed to stand otherwise will not cause any irreparable injury to the petitioners as they are in fact doing what they want to do by appearing as witness of the respondent No.1. Both the revision applications are wholly misconceived and prima-facie appears to have been filed with the object and purpose to delay the proceedings.

6. In the result, both these revision applications fail and the same are dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. The petitioners are directed to pay Rs.1000/as costs of each revision application to the respondents NO. 2 and 3.

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